1952.

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File No. Forest-II/52 (N)

Legal Department.

B **BRANCH**

Subject:— Notifications under the Indian Forest Act, 1927.

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File No. Forest-II/52 (N)

Gen. 191 e.

502-B

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Para 2 of the Agriculture and Forest Department's note at page 77: The view taken by the Agriculture and Forest Department that the form of notification forwarded under R.L.A's u.o.r. No. 19687 dated the 7th December 1951 is the same as that forwarded under his U.O.R. No.19688, dated the 7th December 1951 is not correct. The draft notification forwarded under u.o.r. No. 19687, dated the 7th December 1951 at page 9 of the file 5133/35282 is the final notification which is to be issued by Government under section 35 of the Act after notice is served upon the owner of a forest and his objections have been considered. The notification forwarded under u.o.r. No. 19688 dated the 7th December 1951 at page 61 of file 5133/24414 of the Agriculture and Forest Department file is the draft notification in respect of which objections are to be called from the owner of a forest. The particulars which the final notification may contain may be different from the one contained in the draft notification to be sent along with the notice to an owner of the forest (vide observations made in para 3 of R.L.A's No. 19687 dated the 7th December 1951).

The proposal of the Agriculture and Forest Department to publish the draft notification at page 65 of Revenue Department file 5133/24414 along with form I is not in order. This notification should not form part of the rules to be made under section 76 of the Act. Executive order may be issued to Forest Officers in what form a notification should be prepared for the purpose of being forwarded to an owner of a forest along with a notice to be served under rule 2 of the Rules made under section 76 of the Act.

Para 3 of A. & F.D.Note:-

Under section 36 of the Indian Forest Act, 1927, a forest may be placed under the control of a Forest Officer -

(1) if the owner thereof neglects or wilfully disobeys any regulation or prohibition imposed under section 35 of the Act, or

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(2) if it is necessary to do so on account of any work to be constructed in the forest.

Two requisite draft orders for the above two different purposes are sent herewith.

It would be necessary to specify in the order the regulations or prohibitions which have been infringed by the owner or the nature of the work proposed to be constructed in the forest.

The form of a notice to be issued to the owner under section 36(1) is prescribed in Form II appended to the rules published under Government Notification, Agriculture and Forest Department No. 5133/48513-J dated 19th September 1950. The said form of notice is rather general in terms and does not state precisely in what respect the owner has infringed the regulations or prohibitions. It would be necessary to amend that Form also. The following amendment is suggested to the Form :-

In form II
(1) after the words -
"the regulations or prohibitions" the words specified in the Schedule appended hereto and which have been" shall be inserted;
(2) at the end the following shall be added, namely :-

"SCHEDULE.

(Here insert the relevant regulations or prohibitions which have been alleged to have been infringed by an owner of a forest)."

Id/-J.R.D. 8/5
Additional Secretary to Government.

U.R. to A. & F.D. No. 7376 dated 9th May 1952.

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Legal Department.

Subject to the following remarks, a revised draft notification is sent herewith.

2. Attention is invited to R.L.A's opinion No. 1340 dated 14th February 1945. In that case, when Government Notification, Revenue Department No. 9475 dated 28th November 1945 was issued, it was held by the R.L.A. that as the proposal was to convert the rate on import by cartloads into a rate on import by motor lorries, there would be no objection to issuing the proposed notification.

3. Section 39(4) of the Indian Forest Act, 1927 now reads as follows, namely :-

"39(4). Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by Parliament continue to levy any duty which it was lawfully levying before the commencement of the Constitution under this section as then in force".

So far no law to the contrary seems to have been made by Parliament. Clauses (b) of sub-section (1) of that section authorises levy of duty on forest produce which is brought from any place outside the Part A States and Part C States. In the notifications on the subject in force on the date of the commencement of the Constitution, there was no indication to show what would be the cartload capacity of motor vehicles of more than 1½ tons capacity. Although no change is to be made by the proposed notification in cartload capacity of motor vehicles of 1 ton and 1½ tons capacity, an attempt is being made for the first time to define the cartload capacity of motor vehicles of more than 1½ tons capacity. In view of the proposed amendment more duty will have to be paid on forest produce brought in motor vehicles of more than 1½ tons and therefore the amendment is likely to be challenged on the ground that it goes beyond the scope of section 39(4). Strictly from the legal point of view, there appears no legal objection

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to making proposed amendment, but as on the last occasion in 1945, it is desirable and safer to obtain the concurrence of the Government of India before the amendment is made.

Id/-J.R.D. 15/12
Additional Secretary to Government.

U.R. to A. & F.D.No. 21142/B dated 16th December 1952.

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